

THIS OPINION IS NOT  
CITABLE AS PRECEDENT  
OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Wal-Mart Stores, Inc.

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Serial No. 76495632

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Mark B. Harrison and Jacqueline L. Patt of Venable LLP for  
Wal-Mart Stores, Inc.

Matthew C. Kline, Trademark Examining Attorney, Law Office  
114 (K. Margaret Le, Managing Attorney).

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Before Hairston, Grendel and Cataldo, Administrative  
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register  
of the mark EXPERT GARDENER (in standard character form)  
for goods identified in the application, as amended, as  
"watering devices, namely hose-in sprayers" in Class 21,

and "grass seed" in Class 31.<sup>1</sup> Applicant has disclaimed GARDENER apart from the mark as shown.

At issue in this appeal is the Trademark Examining Attorney's final refusal to register applicant's mark on the ground that it is merely descriptive of the goods identified in the application. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1).

Applicant and the Trademark Examining Attorney have filed main appeal briefs. No reply brief was filed, and no oral hearing was requested. We affirm the refusal to register.

A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function,

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<sup>1</sup> Serial No. 76495632, filed February 13, 2003. The application is based on intent-to-use under Trademark Act Section 1(b), 15 U.S.C. §1051(b). As originally filed, the application sought registration of the mark for goods in Classes 5, 7, 17, 20, 21 and 31. The Class 5 goods were divided out at applicant's request, and are now in use-based child application Serial No. 76975891. The child application also is at the Board on ex parte appeal, but the appeal has been suspended pending the outcome of the present case. The Class 7, 17 and 20 goods were deleted from the present, parent application pursuant to applicant's request in its November 15, 2004 request for reconsideration. Finally, the record shows that applicant is the owner of Supplemental Register Registration No. 2728300, which is of the mark EXPERT GARDENER for Class 1 goods identified as "potting soil; soil amendments for domestic indoor and outdoor use; liquid preparations for application onto plant foliage for enhancing foliage luster; plant food; chemicals for use on lawns, namely

purpose or use of the goods or services. See, e.g., *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987), and *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. That a term may have other meanings in different contexts is not controlling. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Moreover, it is settled that "[t]he question is not whether someone presented with only the mark could guess what the goods or services are. Rather, the question is whether

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fertilizers for domestic use; lawn foods; and soil conditioners for domestic use."

someone who knows what the goods or services are will understand the mark to convey information about them." *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

Finally, it is well-settled that a term which names the intended user of the goods or services is merely descriptive under Section 2(e)(1). See *In re Planalytics, Inc.*, 70 USPQ2d 1453 (TTAB 2004) (GASBUYER merely descriptive of risk management services in the field of pricing and purchasing natural gas); *Hunter Publishing Co. v. Caulfield Publishing Ltd.*, 1 USPQ2d 1996 (TTAB 1986) (SYSTEMS USER found merely descriptive of a trade journal directed toward users of large data processing systems); *In re Camel Mfg. Co., Inc.*, 222 USPQ 1031 (TTAB 1984) (MOUNTAIN CAMPER held merely descriptive of retail mail order services in the field of outdoor equipment and apparel).

The Trademark Examining Attorney has submitted numerous excerpted articles from the NEXIS database which show that "expert gardener" identifies a class or type of gardener. For example (emphasis added):

**Expert gardener** Barbara W. Ellis offers 20 creative plans for turning shady nooks into colorful outdoor living spaces.

Green Bay Press-Gazette, October 11, 2003;

Monica Brandies of Brandon, Bill Hebert of Thonmotosassa and Marian Marsh of Dover will be among **expert gardeners** participating in the 2003 Fall Plant Festival sponsored by the University of South Florida's Botanical Gardens.

Tampa Tribune (Florida), October 9, 2003;

**Expert gardener**, businesswoman and gourmet cook Renee Shepherd visits San Diego next week to share her knowledge of heirlooms and hybrids at the monthly meeting of San Diego Horticultural Society.

The San Diego Union-Tribune, October 5, 2003;

Known to scientists as *Hackelia venusta* (and to some **expert gardeners** as showy stickseed, a type of forget-me-not), Reichard wouldn't say exactly where the last known remaining 500 plants are today.

The Seattle Post-Intelligencer, October 2, 2003;

...interest in gardening. The expertise of the members is mixed - there are some newcomers and some experts - there is a full range of skills within the membership. Even some of us in office aren't by any means **expert gardeners** - everyone can learn something.

Grimsby Evening Telegraph, September 29, 2003;

Rooftop gardening has definite advantages. Singer enjoys a longer growing season than most, because the roof heats so fast. "I'm not an **expert gardener**. I'm not a horticulturalist," he said. "If it's a heat-loving plant, it's my friend. My whole rooftop is kind of a raised bed."

Spokesman Review (Spokane, WA), September 27, 2003;

Don't throw away the plants in your outdoor containers just because winter is on the way. Listen to **expert gardener** Bernie Wiener and learn how to take cuttings and prepare your plants for another season.

Philadelphia Inquirer, September 26, 2003;

Toussaint's bio says she's a fan of architecture and is an **expert gardener** and landscaper, so she's probably just chilling.

Times-Picayune (New Orleans, LA), September 21, 2003;

Giulio DiBenedetto will discuss "miraculous Seeds: Sprouting Demonstration." An **expert gardener**, DiBenedetto will demonstrate a number of ways to grow a variety of sprouts, including buckwheat, sunflower and wheat grass...

The Miami Herald, September 18, 2003; and

Holden Arboretum, 9500 Sperry Road, Kirtland. Explore Holden with **expert gardeners** and naturalists.

Plain Dealer (Cleveland, OH), September 18, 2003.

Based on this evidence, we find that "expert gardener" is and would be understood to be the name of a class or type of gardener, i.e., one of a particular level of skill and experience. Contrary to applicant's argument, we find that there is nothing incongruous, unique or otherwise distinctive about the combination of the words "expert" and

"gardener." Accordingly, we find that EXPERT GARDENER is merely descriptive of applicant's identified goods because it directly names and identifies a potential class of purchasers of the goods, i.e., people who are, or aspire to be, expert gardeners.

Applicant has submitted a dictionary excerpt from the Merriam-Webster Online Dictionary showing that "expert" is defined as "having, involving, or displaying special skill or knowledge derived from training or experience."

Applicant argues that EXPERT therefore "is a nebulous and vague term with no set parameters to define, in this case, any particular type of gardener." We disagree. The repeated references to "expert gardener" in the NEXIS evidence of record shows that the term has a particular, well-understood meaning in the field. Applicant also has submitted sixteen third-party registrations, covering a variety of goods and services, of marks which include the word EXPERT wherein the word has not been disclaimed. However, the existence of such third-party registrations, covering marks and goods or services not at issue in this case, does not detract from the evidence of record in this case which clearly establishes that "expert gardener" identifies a type or class of gardener.

Decision: The refusal to register is affirmed.